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Attorneys for Plaintiff
TheFlyonthewall.com, Inc.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THEFLYONTHEWALL.COM, INC.,

Plaintiff,

v.

TRADE THE NEWS, INC.,

Defendant.

07 CIV 9612

Civil Action No. _____

(Jury Trial Demanded)

JUDGE McMAHON

COMPLAINT

Plaintiff, TheFlyonthewall.com, Inc. ("Plaintiff" or "TheFly"), by and through its attorneys, Ostrager Chong Flaherty & Broitman P.C., for its complaint against defendant, TRADE THE NEWS, INC. ("Defendant" or "TTN"), alleges, upon knowledge as to itself and otherwise upon information and belief, as follows:

NATURE OF THE ACTION

1. This lawsuit arises out of the systematic misappropriation and copyright infringement of TheFly's financial news reports and market analysis (collectively, "newsfeed") by Defendant's online service, "*tradethenews.com*." TTN systematically accesses TheFly's newsfeed and, free riding on TheFly's significant news gathering and market research efforts, rushes to market with the intent and effect of undermining TheFly's investment in providing its subscribers with newsfeed containing exclusive and time-sensitive financial news and market analysis. These acts of misappropriation and copyright infringement warrant both injunctive relief and damages.

2. TheFly's newsfeed, which is pirated by TTN, constitutes a fundamental and competitively significant component of TheFly's business. TheFly's newsfeed is provided only to its subscribers and other authorized recipients. TheFly's newsfeed informs clients as to whether and how to utilize TheFly's services: the more cogent and timely the news and market analysis, the greater its value to TheFly's subscribers and the greater the potential for revenues to TheFly from subscribers. Moreover, the value of the newsfeed to TheFly's subscribers is greatly enhanced by its limited dissemination, i.e., its exclusivity.

3. By misappropriating and infringing upon TheFly's newsfeed and TheFly's limited dissemination of its proprietary financial news and market analysis, TTN has caused injury to TheFly. If not permanently enjoined, TTN will continue to inflict this injury. On the other hand, if enjoined, TTN stands only to lose the illegitimate gains from its free riding on the TheFly's investment, labor, and expertise. TTN would remain free to prepare and disseminate its own financial news and market analysis. Moreover, since financial news and market analysis will

still be available from TheFly and from other authorized distributors, an injunction will not result in any harm to TTN's subscribers who are not intended beneficiaries of TheFly's newsfeed.

PARTIES

4. Plaintiff, Theflyonthewall.com, Inc., is a company organized and existing under the laws of the State of New Jersey, with its principal place of business located at 428 Springfield Avenue, Unit F, Summit, New Jersey 07901.

5. Defendant, TRADE THE NEWS, INC., is a Delaware corporation having a business address at 11 Broadway, Suite. 800, New York, New York 10004.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1338(a) and (b) and 1367.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) and (c), in that a substantial part of the events giving rise to the claims occurred in this district, and defendant is subject to personal jurisdiction in this district.

FACTUAL BACKGROUND

8. For over six years, TheFly has operated a website, *theFlyonthewall.com*, providing financial news and market research to its subscribers.

9. TheFly offers its subscribers financial news information such as market analysis, news reports, analyst trading calls, events, and syndicate information.

10. In order to generate its newsfeed, TheFly invests substantial financial and human resources in obtaining financial information on public companies in various sectors of the

economy and analyzing such information. TheFly's success is due in large part to the substantial investment of time and hard work by its employees, who track the latest industry rumors and report breaking news and analyst comments disseminated by Wall Street trading desks. Through these efforts, TheFly is able to offer its subscribers relevant information in a concise, timely manner.

11. The value of TheFly's newsfeed to its subscribers lies in the quality of the analysis, the timeliness with which the newsfeed is received by its subscribers and the limited dissemination of this newsfeed.

12. TheFly's newsfeed constitutes proprietary and economically valuable material that is intended to assist its subscriber's in making investment decisions.

13. The timeliness, quality and limited dissemination of TheFly's newsfeed is also a means of attracting new subscribers.

14. TTN operates a commercial website, *tradethenews.com*, which offers subscribers access to market analysis and real-time 24-hour headline coverage for global markets news.

15. TTN describes itself as "the financial professional's most trusted source for real-time breaking financial news and analysis." <http://www.tradethenews.com/index.asp> (accessed October 11, 2007)

16. TTN's website has a service called "News Station" which TTN's website describes as follows: "TTN The News instantly analyzes news, companies and the markets, 24hrs a day, distilling over 200,000 headlines and reporting only events that will affect your trading and portfolios. Our analysts deliver breaking market news at unrivalled speeds for financial professionals around the globe." <http://www.tradethenews.com/index.asp> (accessed October 11, 2007)

17. In essence, TTN promotes itself as a source of information and analysis and its means of accomplishing this aim is to free ride on TheFly's proprietary newsfeed.

18. TTN built its business on routinely copying TheFly's newsfeed and posting it, often within seconds of TheFly's news reports, on its website for the benefit of its paying subscribers.

19. On June 3, 2004, TheFly, through its counsel, sent an email to TTN's President, Joe Perrone, advising that TTN was misappropriating information reported by TheFly and demanding that TTN cease such activities.

20. Notwithstanding repeated demands by TheFly since, TTN has taken no action to remedy its practice of systematic appropriation of TheFly's newsfeed which continues to the present.

Copyright Infringement

21. TheFly seeks to recover for willful copyright infringement of TheFly's newsfeed for at least the period January 2007 to the present.

22. The United States Copyright Office has issued Registration No. TX 6-607-623 for TheFly's newsfeed for the period April 21, 2007 to May 20, 2007.

23. The United States Copyright Office has issued Registration No. TX 6-613-007 for TheFly's newsfeed for the period September 2, 2007 to September 30, 2007.

24. TheFly has filed copyright applications seeking registration of its newsfeed for the periods January 1, 2007 to April 20, 2007, May 21, 2007 to June 19, 2007 and July 4, 2007 to August 31, 2007.

25. The following chart illustrates TTN's infringement of each of the listed newsfeeds (the time indicated in each box represents the time the story was published):

DATE	TheFly	TNN	Comment
5/21/2007	6:53:58 Suncor-SU downgraded to Sector Underperformer from Sector Performer at CIBC	6:54 CIBC Cuts SU from Sector Performer to Sector Underperformer	TheFly story on Suncor-SU was in error as Suncor-SU was not downgraded.
5/21/2007	7:59:13 Berry Petroleum-BRY initiated with a Buy & \$40 target@CRTC	8:00 BRY initiated with a Buy at boutique firm; price target \$40	
5/22/2007	8:53:14 Javelin-JAV initiated with a Buy at GROW-Pacific	8:55 Pacific Growth Initiates JAV with a Buy	
5/23/2007	9:29:35 EDU 1.8M share Block Trade priced@49.00; mgr FBCO	9:38 EDU 1.8M share block trade priced at \$49	TheFly reported in error that the transaction was a block trade when it was actually a secondary trade.
5/29/2007	6:08:02 Limited-LTD downgraded to Equal-Weight from Overweight at JPMS	6:10 JP Morgan cuts LTD from Overweight to Neutral	TheFly reported in error that JPMS was the firm that downgraded LTD when it was actually MSCO.
7/10/2007	07:35:45 Wireless Ronin-RNIN initiated with an Outperform, tgt \$15@BRRR	07:37 Wireless Ronin Technologies, Inc. Barrington Initiates RNIN with Outperform, price target: \$15.00	TheFly reported in error the price target of \$15. The correct price was \$14.
7/10/2007	07:41:22 Deere-DE initiated with a Hold on valuation@KBCM	7:42 Deere and Co KBC Initiates DE with Hold	TheFly incorrectly used the symbol "DE". The correct symbol was "DDE".

DATE	TheFly	TNN	Comment
7/16/2007	8:42:01 Activision-ATVI downgraded to Hold from Buy@GABE	8:42 Activision Inc Downgraded to hold from buy at boutique firm	
09/6/2007	08:25:40 XM Satellite-XMSR target raised to \$15 from \$10-Hold@STFG Stanford believes momentum is building in favor of XMSR's merger with SIRI following favorable comments from former FCC chairman and resignation of a senior DOJ official.	08:27:59 XM Satellite Radio Holdings Inc Stanford raised target to \$15 from \$10;hold - Believes momentum building in favor of merger with SIRI following comments from former FCC chairman and resignation of a senior DOJ official	
09/6/2007	08:40:36 Cameco-CCJ target lowered to \$63 from \$73 on lower uranium forecast-TP@RBCM While RBC lowered their target to reflect their reduced uranium price forecast, they think shares offer excellent upside from current levels and maintains a Top Pick rating.	08:42:42 Cameco Corporation (USA) RBC lowers target to \$63 from \$73 on lower Uranium forecast -While RBC lowered their target to reflect their reduced uranium price forecast, they think shares offer excellent upside from current levels and maintains a Top Pick rating	
09/10/2007	09:05:24 Isle of Capri-ISLE view recent weakness as a buying opportunity-Buy@BMUR Brean Murray lowered estimates to reflect the Q1 miss but said the company is improving its asset quality, management team, and operations.	09:12:25 Isle of Capris Casinos Inc Brean Murray sees recent weakness as a buying opportunity - buy - Brean Murray lowered estimates to reflect the Q1 miss but said the company is improving its asset quality, management team, and operations.	

DATE	TheFly	TNN	Comment
9/11/2007	07:26:30 Trubion Pharmaceuticals-TRBN initiated with a Hold@LAZA	07:27:08 Trubion Pharmaceuticals Lazard Initiates TRBN with Hold	TheFly reported the story in error. TRBN was actually downgraded to hold.
9/11/2007	07:51:02 Exelixis-EXEL 7M share Secondary priced@10.40; mgr GSCO	07:52:25 Exelixis Inc Prices 7M share secondary at \$10.40, through Goldman Sachs	
09/18/2007	07:36:42 DemandTec-DMAN initiated with an Overweight, tgt \$15@MSCO	07:37:38 DemandTec Morgan. Stanley Initiates DMAN with Overweight, price target: \$15.00	

Misappropriation

26. TTN also paraphrases TheFly's newsfeed, in some cases, remaining substantially similar to, and thereby infringing, TheFly's copyrighted newsfeed. Whether or not TTN's ongoing conduct constitutes copyright infringement, it remains tortious and injurious to TheFly. TTN continues in bad faith to violate TheFly's rights by accessing, and then posting, in summarized and slightly reworded form, the substantive core of TheFly's newsfeed, often within seconds of its limited release to TheFly's subscribers. TTN's conduct constitutes misappropriation of time-sensitive "hot news" and market analysis generated at substantial expense by TheFly for its subscribers and other authorized recipients, who rely upon the TheFly as a source of significant news and market analysis.

27. The following table shows some examples of TTN's unlawful practice of republishing the substance of TheFly's confidential, time-sensitive news and market analysis, often within seconds of its release by TheFly.

Date	TheFly	TTN	Comment
5/22/07	7:33:19 Integrated Oil & Gas: MRO & RDS.A upgraded to Buy from Hold@AGED	7:34 AG Edwards Raised MRO from Hold to Buy, price target: \$134; AG Edwards Raised RDS.A from Hold to Buy	
5/22/2007	7:34:55 BP PLC-BP downgraded to Hold from Buy on valuation@AGED	7:35 AG Edwards Cuts BP from Buy to Hold	
6/22/2007	9:08:03 Ventana Medical-VMSI initiated with a Sell, price target \$40 at Summer Street	9:08:51 Ventana Medical Systems Inc. Initiated at boutique firm with sell rating and \$40 PT	TheFly reported in error the price target. The correct price was \$41.
6/22/2007	12:42:55 Helen of Troy-HELE downgraded to Hold from Buy at WEDB	12:43 Wedbush Morgan Cuts HELE from Buy to Hold (timing uncertain)	TheFly reported in error that HELE was downgraded to Hold but it was actually downgraded to Sell.
8/03/2007	9:30:02 Insituform Technologies-INSU upgraded to Hold from Sell, price target \$16 at ADAM	9:30:36 Canaccord Adams Raised INSU to Hold from Sell, price target: \$16	TheFly reported in error the price target of \$16, it should have been \$16.50.

Date	TheFly	TTN	Comment
8/29/2007	08:39:31 Home Depot-HD upgraded to Buy from Hold, target \$43@GABE	08:40:05 Home Depot Inc Upgrading shares to Buy from Hold at a boutique firm; Price Target \$43.00	
8/29/2007	08:41:22 Interpublic Group-IPG initiated with a Buy & \$19 target@GABE	08:42:44 Interpublic Group of Companies Inc Initiating shares with a buy rating at a boutique firm; Price Target \$19.00	
8/29/2007	10:24:54 Greenfield Online-SRVY initiated with a Buy, tgt \$21@NEED	10:26 Greenfield Online, Inc Needham initiated with a buy, target \$21- (timing uncertain) likely pre-market	TheFly reported in error the target of \$21, the correct target for SRVY was \$20.
8/29/2007	10:24:54 Greenfield Online-SRVY initiated with a Buy, tgt \$21@NEED	10:26 Greenfield Online, Inc Needham initiated with a buy, target \$21- (timing uncertain) likely pre-market	TheFly reported in error the target of \$21, the correct target for SRVY was \$20.
9/10/2007	08:37:58 Aruba Networks-ARUN upgraded to Outperform from Sector Perform, target \$24@PACS	08:38:40 Aruba Networks Pacific Crest Raised ARUN to Outperform from Sector Perform, price target: \$24.00	TheFly reported in error the target price of \$24, the correct target price is \$23.
9/11/2007	09:28:56 Cogent Communications-CCOI expect growth to accelerate in Q3@BEST	09:29:42 Cogent Communications Bear Sterns expects growth to accelerate in Q3; outperform	

Date	TheFly	TTN	Comment
9/11/2007	09:30:22 Luminex-LMNX initiated with a Buy, tgt \$17@ADAM	09:31:51 Luminex Corporation Canaccord Adams Initiates LMNX with Buy, price target: \$17	
9/11/2007	09:30:33 Affymetrix-AFFX initiated with a Buy, tgt \$27@ADAM	09:31:50 Affymetrix Inc Canaccord Adams Initiates AFFX with Buy, price target: \$27 (timing uncertain)	
9/11/2007	09:30:45 Illumina Corp-ILMN initiated with a Hold, tgt \$54@ADAM	09:31:25 Illumina Inc Canaccord Adams Initiates ILMN with Hold, price target: \$54	
9/13/2007	08:51:26 Vail Resorts-MTN shares should be bought before ski season-Strong Buy@JMPS - JMP Securities encourages investors to buy the company's shares before the ski season and the September earnings release due to easy comparables with last year, strong early pass sales, and strong real estate markets as revealed by checks.	08:52:31 Vail Resorts Inc. JP Morgan emphasizes a strong buy ahead of winter season	
9/20/2007	08:36:54 Emcore-EMKR upgraded to Buy from Market Perform, target \$12@CEUT	08:40:27 EMCORE Corporation Unterberg Raised EMKR to Buy from Mkt Perform, price target: \$12	TheFly reported in error the price target of \$12, correct target is \$13.
9/25/2007	08:54:20 Hexcel-HXL upgraded to Buy from Hold, target to \$25@WEDB	08:54:35 Hexcel Corp Wedbush Morgan Raised HXL to Buy from Hold, price target: \$25	TheFly reported in error the target of \$25 when the correct target was \$26.

Date	TheFly	TTN	Comment
9/26/2007	08:11:17 Lattice Semi-LSCC 18M share Block Trade; price range \$4.45-\$4.50; mgr LEHM	08:11:44 Lattice Semiconductor Corp 18M share block trade price range \$4.45-\$4.50	TheFly reported in error the share amount of 18M when the correct amount was actually 18.5M.
9/27/2007	08:44:14 Ultra Clean-UCTT weakness in share price creates buying opportunity-Buy@STFG	08:44:52 Ultra Clean Holdings, Inc. Stanford reiterates buy rating, see weakness as buying opportunity	
9/27/2007	08:09:41 Harman-HAR upgraded to Outperform from Sector Perform, target \$118@PACS	08:10:13 Harman International Industries Inc. Pacific Crest Raised HAR to Outperform from Sector Perform, price target: \$118	TheFly reported in error the price target of \$118 when the correct target was \$119.
10/01/2007	08:56:05 Polycom-PLCM upgraded to Buy from Hold, target \$36@WEDB	08:56:42 Polycom Inc Wedbush Morgan Raised PLCM to Buy from Hold, price target: \$36.00	TheFly reported in error the price target of \$36, correct target was \$37.
10/01/2007	08:24:17 Nanometrics-NANO upgraded to Outperform from Sector Perform, target \$17@PACS	08:24:59 Nanometrics Inc Pacific Crest Raised NANO to Outperform from Sector Perform, price target: \$17.00	TheFly reported in error the price target of \$17, correct target was \$18.

28. This routine and systematic free riding on TheFly's news gathering efforts and market research activities, impairs TheFly's incentive to provide its newsfeed as an exclusive service to its existing subscribers and to potential new subscribers.

29. To the extent that TheFly is deprived the intended exclusivity of its newsfeed as a result of its being made available by TTN, such conduct by TTN reduces the value of the newsfeed to TheFly's subscribers and inevitably will diminish the volume and dollar value of business generated for TheFly.

30. If TTN's aforementioned activities are allowed to continue, it will inevitably, among other things, adversely affect TheFly's willingness to continue to make substantial investments in generating and distributing such news and market analysis. This is precisely the harm against which the misappropriation doctrine is intended to protect.

COUNT I
COPYRIGHT INFRINGEMENT

31. TheFly repeats and realleges each and every allegation contained in paragraphs 1 through 30 hereof as if fully set forth herein.

32. TTN's unauthorized copying of the most significant portions of the registered newsfeed listed in paragraph 25 above and the sale and distribution of such unauthorized copies to its subscribers by means of TTN's website, *tradethenews.com*, constitutes copyright infringement in violation of the copyright owners' exclusive rights of reproduction, distribution, and display under 17 U.S.C. §§ 106(1), (3), and (5).

33. The copyright violations committed by TTN were willful.

34. TheFly is entitled to statutory damages of up to \$150,000 per work infringed or actual damages and TTN's profits, as well as their costs and reasonable attorney's fees and also an injunction preventing TTN's infringing acts. 17 U.S.C. §§ 501, 502, 504, 505.

COUNT II
MISAPPROPRIATION

35. TheFly repeats and realleges each and every allegation set forth in paragraphs 1 through 34 above as if fully set forth herein.

36. TTN's systematic distribution of the substance of TheFly's newsfeed, close in time to TheFly's own dissemination of such reports constitutes misappropriation of TheFly's newsfeed.

37. Specifically, TTN's practice of obtaining and posting on its website the substance of TheFly's newsfeed is unlawful because:

- (a) TheFly generates its newsfeed at considerable cost and expense;
- (b) the value of TheFly's newsfeed is highly time-sensitive;
- (c) TTN's use of the news and analysis constitutes free riding on TheFly's efforts to generate it;
- (d) TTN's use of the news and analysis is in direct competition with the news and analysis offered by TheFly; and
- (e) the ability of other parties to free ride on TheFly's efforts will substantially threaten TheFly's incentive to continue to invest into its news-gathering and market research and analysis activities at the same level.

38. TTN's conduct diminishes the goodwill between TheFly and its subscribers, which flows from the provision of news and market analysis on an exclusive basis.

39. TTN's conduct has damaged TheFly while unjustly enriching TTN and will continue to do so unless enjoined.

40. TheFly is entitled to injunctive relief, damages, and any other remedies available under New York law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment with respect to their Complaint as follows:

A. Declaring that TTN has willfully violated 17 U.S.C. §§ 106(1), (3), and (5) by infringing the copyright rights of TheFly in news reports and awarding statutory damages of \$150,000 per work infringed or actual damages as may be proved at trial;

B. Declaring that TTN has violated the common law of New York by misappropriating TheFly's property in the commercially valuable, time-sensitive news reports and market analysis contained in the TheFly's website and awarding such damages as may be proved at trial;

C. Granting as against TTN, its agents, servants, officers, employees, and all those acting under its control and/or on its behalf and/or in concert with them, a permanent injunction prohibiting them or any person acting in concert with them from posting on *tradethenews.com* or on any other website owned or controlled by TTN, or from otherwise distributing text containing the substance of all or a qualitatively significant part of any news report or market analysis created by TheFly, until such time as the commercial value derived from the time-sensitivity of the news report or market analysis has passed.

D. Ordering that TTN be required to pay TheFly's costs, disbursements, expenses, and reasonable attorney's fees; and

E. Ordering that TheFly shall have such other and further relief as is just and proper.


JURY DEMAND

Plaintiff demands a trial by jury on all counts so triable.

Dated: October 29, 2007
New York, New York

Respectfully submitted,

OSTRAGER CHONG FLAHERTY
& BROITMAN P.C.

By: 
Glenn F. Ostrager (GFO 2023)
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